UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. **Case No. 05-C-416**
(96-CR-4)

ROY EVANS,

Movant.

DECISION AND ORDER

In 1997, a jury found Roy Evans ("Evans") guilty of various drug offenses for which this Court sentenced him to a term of imprisonment. He unsuccessfully appealed his conviction. In both 2002 and 2004, Evans sought relief pursuant to 28 U.S.C. § 2255. The first motion was denied and the second motion was dismissed for lack of jurisdiction as a successive motion prohibited by statute. Next, in a filing received by the Court on April 11, 2005, Evans sought relief pursuant to 18 U.S.C. § 3582(c)(2). The Court found that motion to be an unauthorized successive attack on his sentence, which the Court accordingly dismissed for lack of subject matter jurisdiction. Now, Evans has filed a motion asking the Court to reconsider its dismissal of his § 3582 motion.

In support of his present motion, Evans reasserts the arguments that failed to persuade this Court in the first instance; Evans has not presented any grounds which would cause the

Court to reconsider its prior decision. Evans's § 3582 motion was properly characterized as a successive § 2255 motion and, even if this Court had jurisdiction to entertain Evans's motion, *United States v. Booker*, __ U.S. __, 125 S.Ct. 738 (2005) cannot afford him relief insofar as it is not retroactively applicable to criminal cases, like his, that became final before January 12, 2005. *See McReynolds v. United States*, 397 F.3d 479, 481 (7th Cir. 2005). Evans's motion to reconsider is without merit.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Evans's Motion for Reconsideration of Motion under 18 U.S.C. § 3582(c)(2) for Sentence Reduction (Docket No. 5) is **DENIED**.

Dated at Milwaukee, Wisconsin this 28th day of April, 2005.

BY THE COURT

s/ Rudolph T. Randa
Hon. Rudolph T. Randa
Chief Judge